

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTHA ZIRKER,

Petitioner,

v.

CASE NO. 06-11175
HONORABLE PATRICK J. DUGGAN

SUSAN DAVIS,

Respondent.

_____ /

ORDER DENYING CERTIFICATE
OF APPEALABILITY

At a session of said Court, held in the U.S. District
Courthouse, City of Detroit, County of Wayne,
State of Michigan on May 27, 2009.

PRESENT: HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Martha Zirker (“Petitioner”) filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which this Court subsequently denied on March 17, 2009. On April 9, 2009, Petitioner filed a Notice of Appeal. Before Petitioner may appeal this Court’s dispositive decision, however, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

When a federal district court rejects a habeas claim on the merits, the substantial

showing threshold is met if the petitioner demonstrates “that reasonable jurists would find the district court’s assessment of the constitutional claim debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). “A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of the petitioner’s claims. *Id.* at 336-37.

In her habeas petition, Petitioner asserted only one claim regarding the admission of a photograph. Having considered the matter, the Court concludes that reasonable jurists would not find the Court’s denial of relief on this evidentiary issue debatable or wrong. To the extent that Petitioner contests the admission of the photograph under state law, she fails to state a claim upon which federal habeas relief can be granted. *See, e.g., Wilson v. Parker*, 515 F.3d 682, 705 (6th Cir. 2008). As to a constitutional challenge, reasonable jurists would not conclude that the admission of the photograph was so egregious as to result in a denial of fundamental fairness. *See, e.g., Ege v. Yukins*, 485 F.3d 364, 375 (6th Cir. 2007). Petitioner has failed to make a substantial showing of the denial of a constitutional right as to the admission of the photograph. Accordingly, the Court **DENIES** Petitioner a certificate of appealability.

IT IS SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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